IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY SEVENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO
WRIT PETITION NO : 401 of 2003

Between:
S.Pullaiah, son of Ramaiah
R/o 1-8-430/17, Chilkadapally, Hyderabad

..... PETITIONER

AND

1 The Commissioner, Municipal Corporation of Hyderabad
Tankbund, Hyderabad
2 The Asst. City Planner, Circle-III
Municipal corporation of Hyderabad Tankbund, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in rejecting the application of the petitioner for construction of residential house on untenable grounds vide letter No.430/17/8/1/2002, dt.13/12/2002 as illegal, arbitrary, unconstitutional and violative of Article 14 and 21 of the constitution of India and also contrary to the provisions of Municipal Corporation of Hyderabad Act and as such liable to be set aside with a consequential direction to the respondents herein to approve the building permission for house No. 1-8-430/17, Chikkadapally , Hyderabad forthwith.

Counsel for the Petitioner:MR.P.V.V.SATYANARAYANA

Counsel for the Respondents: MR.RAMA RAO GANTA

The Court made the following :

ORDER:

The writ petition is filed seeking a Writ of Mandamus declaring the action of the respondents in rejecting the application of the petitioner for construction of residential house on the ground that he did not produce Town Survey Land Register (TSLR) Certificate, as illegal and arbitrary, and consequently to issue a direction to the respondents to approve the building permission for house No.1-8-430.17, Chikkadapally, Hyderabad.

The petitioner claims to be the owner of the premises mentioned hereinabove. He applied for permission under Section 428 and 433 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') proposing to construct a new building in the said premises. The application was rejected by HMC officials and they insisted for production of TSLR Certificate.

At the interlocutory stage, with the consent of the learned counsel for the parties, the Writ Petition itself was heard finally and is being disposed of. It is submitted by the learned counsel for the petitioner and the learned Standing Counsel for the MCH that the issue raised in this Writ Petition is squarely covered by the judgment of this Court in HYDERABAD POTTERIES (P) LTD. v. DISTRICT COLLECTOR[1], which was affirmed by a Division Bench in W.A.No.1096 of 2001 by judgment dt.24-12-2001.

In HYDERABAD POTTERIES CASE (supra), it was held:

….The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector(s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more.

On appeal by the Government, the Division Bench in W.A.No.1096 of 2001 observed:

….Should it be noticed that the Commissioner while acting under Section 429(1) (aa) of the Hyderabad Municipal Corporations Act, 1955 read with relevant Building Bye-laws etc., acts as a statutory authority. It is well

settled that when a statutory authority is required to make a decision on relevant materials and facts, it is not legally permissible for such authority to base its decision only on one piece of relevant material and to exclude other relevant material. The learned Judge has pointed out that in the decision making many relevant materials such as the proceedings taken by the Statutory authorities under the ULC Act, which attained finality and sale deeds, are not taken into consideration in the decision making. The learned Judge has also pointed out that the so called TSLR entries on the basis of which the application was rejected do not form part of the record placed before the Court. Therefore, looking from any angle, no exception can be taken to the direction issued by the learned Judge to the Commissioner to decide the application de-novo having regard to all the relevant materials and the plea raised by the Joint Collector. No ground is made out to interfere with the order of the learned Judge.

In view of the judgments referred to hereinabove, the impugned action insofar as it requires the petitioner to produce TSLR Certificate is concerned, it runs contrary to the law declared by this Court.

Accordingly, the writ petition is disposed of and it is declared that the Municipal Corporation is not entitled to reject the application for building permission only on the ground that the petitioner did not produce TSLR Certificate. There shall be no order as to costs.

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(V.V.S.RAO, J)

27.8.2004
bnr

To

1 The Commissioner, Municipal Corporation of Hyderabad
Tankbund, Hyderabad

2 The Asst. City Planner, Circle-III
Municipal corporation of Hyderabad Tankbund, Hyderabad

3 2 CD copies.

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[1] 2000 (3) ALD 600